

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

PRECISION APPLICATORS, L.L.C

#1053 CMSR/ #1012 CMS Union County

ADMINISTRATIVE CONSENT ORDER

NO. 2016-AFO- **30**

TO: Brad Van Gelder
Precision Applicators, L.L.C.
3147 170th Street
Creston, Iowa 50801

Lonny L Kolln II, Registered Agent
Precision Applicators, L.L.C.
421 W. Broadway, Suite 200
Council Bluffs, Iowa 51503-9046

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Precision Applicators, L.L.C. (Precision Applicators) for the purpose of resolving violations resulting from a manure discharge that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfito, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: (712) 243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: (515) 725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

Precision Applicators neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Precision Applicators is a commercial manure service and Brad Van Gelder is the commercial manure service manager and manure applicator for Precision Applicators. Precision Applicators was contracted by Russ Taylor to pump and apply manure from the Sunrise Pork L.L.C. (Sunrise Pork) swine confinement facility. Mr. Van Gelder was the manure applicator for the job.

2. On August 23, 2015, Dan Brownlee contacted DNR's spill line on behalf of Carl Cisler. Mr. Brownlee indicated that a neighboring hog building may be overflowing because hog manure was observed in a recently constructed farm pond on Mr. Cisler's property. Thad Nanfito, DNR Field Office 4 environmental specialist, contacted Mr. Brownlee to discuss the complaint. Mr. Brownlee stated the pond was in the middle of timber and that he could give Mr. Nanfito access to the pond. The two agreed to meet the following day. Following the conversation, DNR Field Office 4 determined the facility in question was the Sunrise Pork facility, located at 3010 150th Street, Lorimor, Iowa.

3. On August 24, 2015, Mr. Nanfito met with Mr. Brownlee. Mr. Brownlee showed Mr. Nanfito a pooled area of liquid that had a strong manure odor and the water was a dark, murky color. The pooled area was approximately 100 feet from the pond. Areas of the pooled area were bubbling and actively discharging and flowing into Mr. Cisler's newly constructed farm pond that was not filled to capacity yet. The water line was roughly 10 feet in depth from reaching the tube outlet. Mr. Nanfito measured the temperature and pH from a shallow area of the pond approximately 40 feet south of the discharge, which measured 21 degrees Celsius and 7.1 pH. Mr. Nanfito measured the temperature and pH of the discharge, which measured 19 degrees Celsius and 7.1 pH. A field test of the discharge indicated an ammonia concentration between 10-15 mg/L. A field test at the northeast corner of the dam area on the flat side of the pond indicated an ammonia concentration of 5 mg/L. Mr. Nanfito and Mr. Brownlee discussed the removal of the manure. Mr. Brownlee stated that the neighbor would be given access to remove the manure.

4. Mr. Nanfito visited the Sunrise Pork facility and did not observe any manure discharging from the confinement buildings. Mr. Nanfito observed a field directly west of the buildings with a significant amount of manure solids exposed. Mr. Nanfito noted tool bar lines in the soil, indicating an attempt to inject the manure. Mr. Nanfito also noted erosion in the field with broken terraces. The flow path of the manure led to the pooled area discharging to the pond. Mr. Nanfito noted a tractor and manure tank with Precision Applicators name and identification number on them at the facility.

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5. Mr. Nanfito spoke to a representative of Pinnacle Environmental, consultant for Sunrise Farms, and explained the situation. The representative stated that approximately 15 loads of manure had been removed from the facility and applied to the field on August 18, 2015. Mr. Nanfito also spoke to Mike Taylor, a partner of his brother Russ Taylor, and the representative from Pinnacle Environmental, regarding the removal of the manure. They stated that would speak to Mr. Van Gelder regarding the removal of the manure. On August 25, 2015, Mr. Nanfito spoke to the Pinnacle Environmental representative who stated the manure would be removed using a 5,000 gallon tank and trash pump.

6. On August 28, 2015, Mr. Nanfito visited the pond that the ammonia levels had decrease in the impacted areas. Mr. Nanfito informed the Taylors that the pumping efforts could be stopped.

7. On September 17, 2015, Dan Olson, DNR Field Office 4 environmental specialist senior, reviewed the MMP for Sunrise Farms and the application records. Mr. Olson's review indicated that portions of the application records were not present, including the following provisions: factors used to calculate the manure application rate, maximum allowable manure application rate, methods of application when the manure was applied, and a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure. Mr. Olson also noted that the erosion section was determined for a field with terraces, even though the field in question did not have terraces.

8. On February 10, 2016, DNR issued a Notice of Violation letter to Precision Applicators and Mr. Van Gelder for the violations discovered during the August 2015 investigation.

IV. CONCLUSIONS OF LAW

Precision Applicators neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. During DNR Field Office 4's investigation it was determined manure from the application field was discharged to the neighboring pond following manure application by Precision Applicators. The above-mentioned facts indicate a violation of this provision.

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3. 567 IAC 65.19(8) states that a certified commercial manure service has the obligation to comply with the provisions of the manure management plan prepared for the confinement feeding operation. A review of the manure management plan and the application records indicate that the manure application was not done in accordance with the manure management plan. The above-mentioned facts indicate a violation of this provision.

4. Based on the fact that Precision Applicators has no previous violations, the DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Precision Applicators implements the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Precision Applicators agrees to do the following:

1. Precision Applicators shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;

2. Within 30 days of the date the Director signs this administrative consent order, Precision Applicators shall develop a Standard Operating Procedure detailing an extensive employee training program, including but not limited to proper land application to ensure that manure does not leave the application field and the development of a checklist to ensure that the facility's manure management plan is followed. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 4 and the Standard Operating Procedure shall be implemented by Precision Applicators immediately upon receipt of approval from DNR Field Office 4; and

3. Precision Applicators shall pay an administrative penalty in the amount of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and

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criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Precision Applicators gained an economic benefit by avoiding the costs associated with ensuring that manure did not leave the application field. Based on the above-mentioned information \$50.00 is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 documented a manure release to a pond causing surface water contamination and resulted in animal feeding operation regulation violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Precision Applicators has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Therefore, \$950.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Precision Applicators. For that reason Precision Applicators waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief
and civil penalties pursuant to Iowa Code section 455B.191.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 28th day of
December, 2016.


PRECISION APPLICATORS, L.L.C.

Dated this 22 day of
December, 2016.

Kelli Book, DNR Field Office 4, EPA, VIII.D.1 and VIII.D.3